under the statute it is not necessary, to render the killing justifiable, that they be taken in the act. If the facts would constitute manslaughter at common law, under the Texas statute the killing would be justifiable. But when the rule of construction of penal statutes is borne in mind, that they are to be strictly construed, *Texas and Pac. Ry. Co. v. Blockes,* 48 Tex. Civ. App. 100, it is hard to sustain the holding that under these facts, the appellant was entitled to a charge that he did not violate the law.

R. C. W.

NEGLIGENCE—LIABILITY OF MANUFACTURER TO THIRD PARTIES—NATURE OF THE GOODS AS TEST.—MACPHERSON V. BUICK MOTOR CO., 111 N. E. (N. Y.) 1050.—Plaintiff, owner of an automobile purchased from a retail dealer, was thrown out and injured by the collapse of a defective wheel. The complete machine had been assembled by and sent out from defendant as manufacturer, though the wheel itself had been bought from another manufacturer. *Held,* that a manufacturer of automobiles is liable to third parties, not in contract relation with him, for injuries due to negligent defects in construction, and that he is responsible for the finished product although parts may have been bought from a reputable manufacturer.

The manufacturer and seller of articles of ordinary use, in themselves harmless, is not liable to those not in contract relations with him for personal injuries due to negligence in construction of the article. *Thornhill v. Carpenter-Morton Co.,* 108 N. E. (Mass.) 474. But the maker of a thing imminently dangerous to life or health owes a positive duty of care, commensurate with the peril, to every person into whose hands it may lawfully come, or by whom it may lawfully be used. *Wood v. Sloan,* 148 P. (N. M.) 507. Within this class there is a tendency to include not only commodities whose very existence is fraught with danger to owner and public—such as explosives, *Mathis v. Granger Brick & Tile Co.,* 149 Pac. (Wash.) 3; electricity, *Kentucky Utilities Co. v. Searcy,* 181 S. W. (Ky.) 662; gas, *Sharlsey v. Portland Gas & Coke Co.,* 144 Pac. (Or.) 1152; volatile petroleum products, *Standard Oil Co. v. Wakefield,* 63 Fed. 400, etc.,—but also those whose normal use would result, with reasonable certainty, in personal harm to the user, if not properly made. Thus, food, *Parks v. G. C. Yost Pie Co.,* 144 Pac. (Kan.) 202; bottled drinks, *Boyd v. Coca Cola Bottling Works,* 177 S. W. (Tenn.) 80; drugs, *Mazetti v. Armour & Co.,* 75 Wash. 622; and soap, *Hasbrouck v. Armour & Co.,* 139 Wis. 357, have been held to be of this nature. In regard to vehicles there has been a distinct and confessed conflict. The English view, that they are not of this essentially and imminently dangerous class, set forth in *Winterbottom v. Wright,* 10 Meeson & Welsby 109, quoted in the principal case, has been followed in this country as regards carriages, *Burkett v. Studebaker Mfg. Co.,* 150 S. W. (Tenn.) 421, and by the federal court in the case of automobiles. *Cadillac Motor Car Co. v. Johnson,* 221 Fed. (U. S. C. C. A.) 801. On the other hand, at least two decisions have recognized the public policy of holding to strict accountability the man who puts out an instrumentality of high speed

transportation upon whose soundness will almost certainly depend many lives. *Olds Motor Works v. Shaffer,* 145 Ky. 616; *Quackenbush v. Ford Motor Co.,* 153 N. Y. S. 131. Certainly as a question of fact it is not difficult to see that there is a vital distinction between the horse-drawn vehicle, with its inevitable limitations of speed and capacity, and the modern motor car whose reliability is daily being subjected to more and more severe tests and, accordingly, whose potential danger is steadily rising. The only conceivable objection is that raised by the minority opinion, namely, that in view of its theoretical analogy to non-dangerous articles, the law of the motor should be amended by statute rather than by judicial interpretation.

C. B.

TELEGRAPHS AND TELEPHONES—NEGLIGENT DELAY IN DELIVERY—DAMAGES FOR MENTAL ANGUISH.—LAWRENCE V. WESTERN UNION TEL. CO., 88 S. E. (N. C.) 226.—Because of negligent delay of defendant in delivering a telegram to the plaintiff, a negro, he was thereby prevented from attending the funeral of a friend, a white man. *Held,* that mental anguish having been shown, the plaintiff could recover compensatory damages. Brown, J., *dissenting.*

At common law there can, as a general rule, be no recovery of compensatory damages for mental suffering unaccompanied by physical injury. *Connelly v. Western Union Tel. Co.,* 100 Va. 51; *W. U. Tel. Co. v. Skar,* 126 Fed. 295; unless such mental suffering results from a willful or malicious wrong of defendant. *W. U. Tel. Co. v. Rogers,* 68 Miss. 748. This general rule also applies to cases where, through the negligent delay of defendant, the plaintiff has been prevented from being present at the bedside before death or from attending the funeral of a close relative. *Davis v. W. U. Tel. Co.,* 46 W. Va. 48; *Rowan v. W. U. Tel. Co.,* 149 Fed. 550. Several states follow the rule that for mental anguish in such cases, the plaintiff can recover special damages only where such were within the reasonable contemplation of the parties. *W. U. Tel. Co. v. Hogue,* 79 Ark. 33; *W. U. Tel. Co.,* 87 Tex. 165. Other cases hold that such damages may be recovered only where the telegraph company had notice from the language of the message or otherwise, that by reason of its default or negligence such damage would likely ensue. *Williams v. W. U. Tel. Co.,* 136 N. C. 82; *Clay v. W. U. Tel. Co.,* 78 S. C. 109. Some states hold to the doctrine that recovery may be had if the relationship between the parties is close, such as husband and wife, parent and child, brother and sister. *W. U. Tel. Co. v. Benson,* 159 Ala. 254; *W. U. Tel. Co. v. De Andrea,* 45 Tex. Civ. App. 395. And in these cases mental anguish is presumed. But if the family relationship is more remote or by marriage only, then mental anguish must be proved, in the jurisdictions allowing recovery for mental suffering alone. It is apparent from the cases in jurisdictions following the minority rule, that the relation between the parties was that of blood or marriage relationship. But in the principal case, that element is entirely disregarded, as one is a negro and the other a white.

L. W. B.